

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1256

To be argued by
DAVID J. GOTTLIEB

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
:
UNITED STATES OF AMERICA, :
:
Plaintiff-Appellee, :
:
-against- :
:
RAMON AMPARO, :
:
Defendant-Appellant. :
-----X

Bp/s
Docket No. 77-1256

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MARTIN ERDMANN, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
FEDERAL DEFENDER SERVICES UNIT
509 United States Courthouse
Foley Square
New York, New York 10007
(212) 732-2971

DAVID J. GOTTLIEB,
Of Counsel.

PAGINATION AS IN ORIGINAL COPY

JUDGE/MAGISTRATE Assigned: U.S.
 0203 01 0858
 vs
 District Office
 LAST FIRST, MIDDLE:

AMPARO, RAMON, a/k/a
 GOMEZ, RAYMOND
 t/n Ramon Amparo

Case Filed
 Mo Day
 11 08
 No. of Defs
 * 01

76 1016 01

U.S. MAG. CASE NO. 76-1032

BAIL - RELEASE

☐ ANT ☐ Fugitive
☐ Denied ☐ Set ☒ Pers. Recog.
☒ PSA

\$2,000

Date 9/10/76
☒ 10% Deposit
☐ Surety Bond

☐ Bail Not Made
☐ Status Changed (See Docket)
☐ Collateral
☐ 3rd
☐ Pny Cust
☐ Other

SENTENCE

Disposition of Charges
 3-24-77 5-16-77

☐ Convicted
☐ Acquired
☐ Dismissed
☐ On All Charges
☐ On Lesser Offenses
☐ WOP
☐ WP
☐ On Government's Motion

U.S. TITLE SECTION
 18:201(b) Bribery of public official
 18:201(b) Bribery of public official
 18:201(f) Giving gratuity to public official

OFFENSES CHARGED
 ORIGINAL COUNTS

1
 2

JUN 7 1977
 DANIEL TUDARO, CLERK
 SECOND SUPPLEMENTAL COUNTS

II. KEY DATES & INTERVALS

ARREST or
 1:40p.m.
 9/10/76
 U.S. Custody Began
 Summons Served
 First Appearance

INDICTMENT
 Information
 11-8-76
 Indict Waived
 Superseding
☒ Indict/Info
 3-9-77

ARRAIGNMENT
 11-18-76
 Trial Set For
 11-18-76
 First Plea
 Final Plea

TRIAL
 Trial Began
 Trial Ended

MAGISTRATE

Search Warrant
 Issued
 Return
 Summons
 Issued
 Served
 Arrest Warrant Issued
 COMPLAINT
 OFFENSE (in Complaint)
 18 USC 201 - BRIBING A FEDERAL EMPLOYEE

DATE
 9/8/76
 9/8/76

INITIAL NO.
 LB-08AH
 LB-08AH

INITIAL APPEARANCE DATE
 9/10/76
 PRELIMINARY EXAMINATION OR
 REMOVAL HEARING
 Date Scheduled 9/20/76
 Date Held
 Waived
☒ NOT WAIVED
☒ INTERVENING INDICTMENT

INITIAL NO.
 LB-08AH

OUTCOME:
☐ DISMISSED
☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

U.S. Attorney or Asst.

Martin B. McNamara
 791-1934

ATTORNEYS

Defense: ☐ CJA ☐ Ret. ☐ Waived ☐ Self ☐ None / Other: ☐ PS ☐ CO

Edward Chase, Esq.

Show last names and suffix numbers of other defendants on same indictment information.

DATE
 9/8/76
 9/10/76
 9/13/76
 11/8/76
 11-18-76
 12-30-76
 1-18-77
 2-18-77
 2-18-77

DOCUMENT NO.
 Complaint filed, warrant issued
 Defendant presented, Legal Aid assigned. Defendant released on bail, address: 600 W. 133rd St., N.Y. Defendant to post \$200 cash by 9/13/76.
 Defendant deposited \$200 cash with the Clerk of the Court.
 Indictment filed, 76 Cr. 1016.....Cooper, J.
 Deft. (atty. present) Pleads not guilty. Bail \$2,000. P.R.B. sec. by \$200. cash cont'd. Case assigned to Judge Stewart for all purposes. Cannella, J.
 Pre-trial conference held Trial scheduled for 2-22-77 at 10 A.M.....Stewart, J.

PROCEEDINGS
 Filed Deft's proposed Voir Dire
 Filed Govt's request to charge
 Filed Govt's requested Voir Dire questions of prospective jurors

EXCLUDABLE DELAY
 (a) (b) (c) (d)

25217

DATE	page 2	PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY			
				INTERVIEW (1)	RECEIPT (2)	LP (3)	TRAIL (4)
2-24-77		Atty Ed Chase Esq. present . Jury empanelled. trial begun. Interpreter Denna Kohn Sworn....Stewart,J.					
2-25-77		Trial cont'd					
2-28-77		Trial cont'd					
3-1-77		" "					
3-2-77		" "					
3-3-77		" "					
3-4-77		Trial cont'd & concluded. Jury could not arrive at a verdict The Court declares a mistrial. New trial scheduled for 2:00 P.M. 3-10-77. Jurors discharged....Stewart,J.					
3-9-77	/	Filed Superseding Indictment & referred to Stewart,J.Bryan,J.					
3-10-77	/	Filed affid & notice of motion for an order dismissing the indictment ret 3-10-77					
3-10-77	/	Filed deft's memorandum of law in support of his motion to dismiss the superseding indictment or, in the alternative, Count two thereof, pursuant to Rule 12(b) of the F.R.C.P.					
3-10-77	/	Filed Amparo's request to charge					
3-10-77		Interpreter Dena Kohn sworn . Deft's motion to dismiss both counts of the ind. -or in the alternative to dismiss count 2 only . DEC. RES....Stewart,J.					
3-11-77		Deft's motion of 3-11-77 DENIED. Deft pleads N/G to the ind. Jury empanelling begun . Bail cont'd \$2,000 PRB secured by \$200 cash or surety.....Stewart,J.					
3-14-77		Trial cont'd Jury panelling cont's & concluded. Trial begun before Stewart,J.					
3-15-77		Trial cont'd					
3-16-77		" "					
3-17-77		" "					
3-18-77		" "					
3-21-77		" "					
3-23-77		" "					
3-24-77		Trial cont'd & concluded Jury finds deft Guilty on ct 1 only PSIM ordered Bail cont'd pending sentence . Sentence adj to 5-16-77 at 10:00 A.M. DEft's motion to dismiss ct 2 no objection by Govt. Motion granted...Stewart,J					
3-28-77	/	Filed Govt's requests to charge					
3-28-77	/	Filed govt's supplemental requests to charge					
4-15-77	/	Entered & filed NOLLE PROSEQUI... Stewart,J. (Or)					
4-26-77	/	Filed deft's notice of motion Pursuant to the Fed Rules of Crim. Proc. Rule 29(c) the deft hereby moves the Court to set aside the verdict & enter a Judgment of acquittal					

(continued on page 3)

FEE AND RESTITUTION PAYMENTS					
DATE	RECEIPT NUMBER	CD NUMBER	DATE	RECEIPT NUMBER	CD NUMBER

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

AMPARO, RAMON a/k/a Gomez, Ramon
t/n/ Ramon Amparo

U. S. vs

PAGE 3

CES

76 1016

1

Yr. Docket No. De

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
	(Document No.)	(a)	(b)	(c)	(d)
5-16-77	Filed JUDGMENT & COMMITMENT DEft (atty Edward T. Chase present) Interpreter Dina Kohn sworn. Pursuant to T. 13 5010(a) The deft is sentenced as a Young Adult Offender. DISPOSITION OF SENTENCE is SUSPENDED & the deft is placed on probation for a period of THREE (3) YEARS , subject to the provisions of the Youth Corrections ActSTEWART, J. Co ies issued				
5-16-77	Filed memo end on motion fld 4-26-77- Motion denied So ordered STEWART, J. M/N				
5-18-77	Filed notice of appeal from the Judgement of conviction entered on the 16th day of May 1977 . M/N to deft & U.S. Atty				

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A TRUE COPY

RAYMOND E. BURGHARDT, Clerk

Deputy Clerk

3
1
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA

- v -

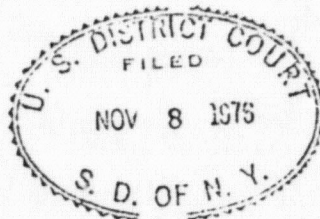
RAMON AMPARO, a/k/a
"Raymond Gomez",

Defendant.
-----x

: 76 CR 1013

: INDICTMENT

: 76 Cr.



The Grand Jury charges:

From in or about February, 1976 up to and including the 10th day of September, 1976, in the Southern District of New York, RAMON AMPARO, a/k/a "Raymond Gomez", the defendant, unlawfully, wilfully and knowingly did, directly and indirectly, corruptly give, offer and promise a thing of value, to wit, money, to a public official who was an employee of the Department of Health, Education and Welfare of the United States, with intent to influence such public official in an official act, to wit, the processing of applications for social security cards, and to induce such public official to do and omit to do acts in violation of such public official's lawful duty.

(Title 18, United States Code, Section 201(b).)

James R. Newman
FOREMAN

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
United States Attorney

MICROFILM

NOV 08 1976

3

1977 - Cont'd.:

1977 - Trial cont'd. & concluded. Jury could
not arrive at a verdict. The Court
declares a mistrial. New trial scheduled
for 2 P.M. March 10, 1977. Jurors discharged.

Stewart, J.
B

~~FILED 24 1977~~

76 CRIM. 1016

Form No. USA-225-274 (Ed. 9-25-53)

United States District Court
SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

RAYMON AMEARO, a/k/a
"Raymond Gomez",

Defendant.

INDICTMENT

76 Cr.

(In violation of Title 18, U.S.C.
§ 201(b).)

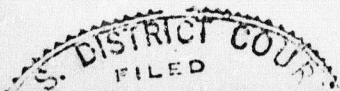
ROBERT B. FISKE, JR.

United States Attorney.

A TRUE BILL

Wm. A. Brown

Foreman.



11-8-76 - Filed Indictment. *Cooper J.*

11-18-76 - Dept. (Atty. Edward Chase)
pleads not guilty. Bail \$2000. ARB
Secured by \$200. cash, continued.
Assigned Stewart J. for all purposes.
JUDGE STEWART

no Cannella

12/30/76 - Pre-trial conference held. Trial
scheduled for 2/22/77 at 10 A.M.

Stewart, J.

FEB 24 1977 *Patterson, Elmer*

Atty. Ed. Chase, Esq. present. Jury
empaneled, trial begun. Interpreter DEWA
Kohn sworn.

FEB 25 1977

trial contd.

FEB 28 1977

trial contd.

Stewart, J.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v -

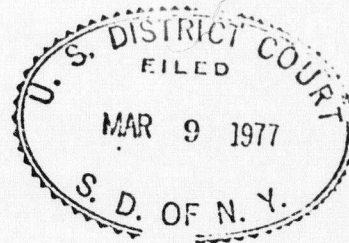
RAMON AMPARO, a/k/a
"Raymond Gomez",

Defendant.

(S) 76 CR 1016

INDICTMENT

S 76 Cr. 1016



COUNT ONE

The Grand Jury charges:

From in or about February, 1976 up to and including the 10th day of September, 1976, in the Southern District of New York, RAMON AMPARO, a/k/a "Raymond Gomez", the defendant, unlawfully, wilfully and knowingly did, directly and indirectly, corruptly give, offer and promise a thing of value, to wit, money, to a public official who was an employee of the Department of Health, Education and Welfare of the United States, with intent to influence such public official in official acts, to wit, the processing of applications for social security cards, and to induce such public official to do and omit to do acts in violation of such public official's lawful duty.

(Title 18, United States Code, Section 201(b).)

9 1977

COUNT TWO

The Grand Jury further charges:

From in or about February, 1976 up to and including the 10th day of September, 1976, in the Southern District of New York, RAMON AMPARO, a/k/a "Raymond Gomez", the defendant, unlawfully, wilfully and knowingly did, otherwise than as provided by law for the proper discharge of official duties, directly and indirectly give, offer and promise a thing of value, to wit, money, to a public official who was an employee of the Department of Health, Education and Welfare of the United States, for and because of official acts performed and to be performed by such public official, to wit, the processing of applications for social security cards.

(Title 18, United States Code, Section 201(f).)

Marion F. Jordan
FOREMAN

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
United States Attorney

1977 10/27

pending. sent to [unclear] [unclear] [unclear]
/p.m. [unclear] [unclear] [unclear] [unclear]
by Capt. Mohr. [unclear]

Stewart, J

19 1977 Dept. advised. ally Edward T. Chase. Ex. [unclear] fy
[unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear]
interpreter Denis Rahn, sworn. JSS. Probation 3 yes.
subject to provisions of Youth Corrections Act.

Stewart, J fy

(S) 76 Cr 1016
Form No. USA-335-274 (Ed. 9-25-58)

United States District Court
SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

RAMON AMPARO, a/k/a
"Raymond Comez",

Defendant.

INDICTMENT

(18 U.S.C. § 201(b).)

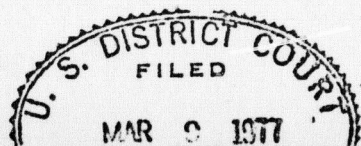
ROBERT B. FISKE, JR.

United States Attorney.

A TRUE BILL

Marion F. Jordan

Foreman.



March 9, 1977 - Filed Indictment S 76 Cr. 10.
and referred to Judge Stewart as being
Related to and superseding Indictment
76 CR. 1016 (Stewart).
van Pelt Bryan, J.

MAR 10 1977 - Interpreter Dena Kohn R
Deft's motion to dismiss both
Counts of the Indictment - or in the altern-
-ative to dismiss Ct. 2 only - Dec. Rec.
Stewart, J.

MAR 11 1977 Deft's motion of 3/10/77 - Denied. Deft
pleads ~~Not Guilty~~ Not Guilty to the Indictment. Jury
empaneled. ~~Bail set at \$200.00~~ Bail set at \$200.00.
secured by \$200.00 cash or surety. Stewart, J. p.

MAR 14 1977 Trial Cont'd. Jury paneling cont'd.
& concluded. Trial begun before
Stewart, J.

MAR 15 1977 Trial cont'd. Stewart, J.

MAR 16 1977 Trial cont'd.
MAR 17 1977 "
MAR 18 1977 "

1 THE COURT: Ladies and gentlemen, we have now
2
3 come to that part of the case where the evidence is all in,
4 the lawyers have presented their final arguments and you are
5 about to exercise your final role, that is, to pass upon,
6 decide the factual issues in this case. It is your respon-
7 sibility to reach a just verdict in the determination of the
8 charges against the defendant, and I know that you will
9 deliberate towards reaching a verdict fairly, honestly and
10 consciously.

11 I want to impress upon you that you are the
12 sole, the exclusive judges of the facts. You pass upon the
13 weight of the evidence. You resolve such conflicts as there
14 may be in the evidence. You draw such reasonable inferences
15 as may be warranted by the testimony or the exhibits or the
16 stipulations in the case.

17 My function now is to instruct you on the law
18 applicable to the case. It is your sworn duty to accept the
19 law as I say it to you in these instructions, not what the
20 lawyers may have said the law is, but as I say it to you, and
21 to apply the law to the facts as you find the facts to be.

22 With respect to any fact matter, it is your
23 recollection and yours alone that governs. Anything that
24 counsel may have said, anything that I may have said with
25 respect to matters in evidence at any time is not to be

1 mclp 344

2 substituted for your own reason or review of the evidence.

3 As I said, the case must be decided upon the
4 testimony of the witnesses and the exhibits and the stipula-
5 tions. You may not take into account or consider in any way
6 any extraneous matters, such as anything outside of the court-
7 room or in the jury room or in the courthouse or any other
8 place, only the evidence presented to you in this courtroom
9 may be considered by you.

10 The fact that the Government is a party, the
11 prosecution has brought in the name of the United States,
12 entitles it to no greater consideration than that accorded to
13 any other party. By the same token, it is entitled to no
14 less consideration.

15 I want to give you a few general principles
16 of law, most of which I have already stated to you. Remember
17 that the indictment is simply an accusation, a charge. It is
18 not evidence or proof of the guilt of the defendant. It is
19 not evidence of anything. It is only a means used by the
20 Government to bring a defendant before the Court, and you
21 will give no weight to the fact that an indictment has been
22 returned against this defendant.

23 The defendant has plead not guilty. Therefore
24 the Government has the burden of establishing and proving
25 beyond areasonable doubt by competent evidence the charges

mclp 345

made against him. Whether this burden is sustained does not depend upon the number of witnesses or the quantity of the testimony, but rather on the nature and the quality of the testimony and the other evidence.

A defendant does not have to prove his innocence. On the contrary, a defendant is presumed to be innocent of the accusations contained in the indictment and the Government must prove a defendant's guilt beyond a reasonable doubt. This presumption of innocence was in the defendant's favor when the trial began, it was present during the trial, it is present now as I charge you, and it remains in the defendant's favor during the course of your deliberations in the jury room. It is removed only if and when you are satisfied that the Government has sustained its burden of proving the guilt of the defendant beyond a reasonable doubt.

It is for this reason that a defendant does not need to take the witness stand and, in fact, the defendant in this case has not testified on his own behalf. The Constitution, the laws of the United States, provide that in any criminal matter a defendant is under no obligation to come forward to testify or indeed to produce any evidence -- I repeat -- the Constitution and the laws of the United States provide that in a criminal matter a defendant is under no obligation to come forward to testify or indeed to produce

any evidence, and this is because the burden of proving a violation is solely and exclusively on the prosecution. So you are to draw no inference from the defendant's failure to testify and, in fact, you must not speculate upon it or consider it in any way in your deliberations. A defendant has the absolute right not to make any defense and to rely upon the Government's burden to prove his guilt beyond a reasonable doubt.

I have mentioned to you several times the words reasonable doubt. Reasonable doubt is such a doubt as would cause you to hesitate to act in a matter in your own lives. It is a doubt which a reasonable man has after carefully weighing all the evidence. It is one which appeals to your reason, to your judgment, to your own experience. A reasonable doubt is not caprice, speculation, whim. It is not an excuse to avoid the performance of an unpleasant duty. Speculative or imaginary qualms or misgivings are not reasonable doubt. It is not necessary for the Government to prove the guilt of a defendant to a mathematical certainty or beyond all possible doubt. It is practically impossible for a person in our world to be absolutely and completely convinced in any controverted fact which by its very nature is not susceptible of mathematical certainty. In consequence, the law is that in a criminal case like this it is enough

proof that a defendant is guilty is established beyond a reasonable doubt, though not beyond all possible doubt.

If after a fair and impartial consideration of all the evidence in the case or the lack of it, you can honestly say that you have such a doubt as would cause a prudent person to hesitate before acting in matters of importance to himself, then you have a reasonable doubt and in that circumstance it is your duty to acquit.

On the other hand, if after a fair and impartial consideration of the evidence or the lack of it you can honestly say you have such an abiding conviction of the guilt of the defendant that that you would be willing to act upon this conviction as you would in important and weighty matters in the personal affairs of your own lives, then you have no reasonable doubt and in that circumstance it is your duty to convict.

A reasonable doubt may arise not only from the evidence presented but also from the lack of evidence, since the burden, as I have told you, is always on the Government to prove the defendant guilty of every essential element of the crime charged beyond a reasonable doubt.

I am going to read to you the two counts in the indictment and, incidentally, you will be handed a copy of the indictment to take with you into the jury room.

"Count 1: From in or about February, 1976 up to and including the 10th day of September 1976, in the Southern District of New York, Raymond Amparo, also known as Raymond Gomez, the defendant, unlawfully, wilfully and knowingly did, directly and indirectly, corruptly give over and promise a thing of value, to wit, money to a public official who was an employee of the Department of Health, Education and Welfare of the United States with intent to influence such public official in official acts, to wit, the processing of applications for Social Security cards and to induce such public official to do and omit to do acts in violation of such public official's lawful duty.

"Count 2: From in or about February, 1976 up to and including the 10th day of September 1976, in the Southern District of New York, Raymond Amparo, also known as Raymond Gomez, the defendant, unlawfully, wilfully and knowingly did otherwise than as provided by law for the proper discharge of official duties, directly and indirectly, give over or promise a thing of value, to wit, money to a public official who was an employee of the Department of Health, Education and Welfare of the United States for and because of official acts performed and to be performed by such public official, to wit, the processing of applications for Social Security cards."

The defendant is charged in the indictment with having violated two sections of the United States Law which provides in pertinent part as follows as to Count 1:

"Whoever, directly or indirectly, corruptly gives, offers or promises anything of value to any public official with intent to influence any official act or to induce such public official to do or omit to do any act in violation of his lawful duty...commits a crime."

As to Count 2:

"Whoever otherwise than as provided by law for the proper discharge of official duty directly or indirectly gives, offers or promises anything of value to any public official for or because of any official act performed or to be performed by such public official...commits a crime."

To clarify the meaning of these statutes I will define a few of the terms that I have just read. I charge you as a matter of law that an employee of the Social Security Administration, a part of the United States Health, Education and Welfare Administration, is a public official within the meaning of the statutes charged to be violated in this indictment."

Also, as a matter of law, the processing of Social Security applications by an employee of the Social Security Administration is an official act within the meaning

1 payment of money to Mrs. Sanchez is also charged in this
2 indictment, actual payment is not necessary to the commission
3 of the offense with which the defendant is charged. The
4 first element may be satisfied if you find beyond a reason-
5 able doubt only that Mr. Amparo offered or promised Mrs.
6 Sanchez money.
7

8 The first element requires you to find beyond
9 a reasonable doubt that the defendant corruptly gave, offered
10 or promised Mrs. Sanchez money. An act is corruptly done if
11 done voluntarily and intentionally and with the bad purpose
12 of accomplishing either an unlawful end or result or a lawful
13 end or result by some unlawful method or means.

14 So, a person acts corruptly whenever he makes
15 a wilful attempt to persuade or influence the official action
16 of a public official by an offer of money or something of
17 value.

18 Proof that compensation was offered with corrupt
19 intent to influence a Government official is made by reference
20 to acts, conduct, surrounding circumstances and reasonable
21 inferences that can be drawn therefrom.

22 Proof of payment alone is not sufficient to
23 show corrupt intent. Thus, in order to find the defendant
24 guilty of bribery the jury must be satisfied that all of the
25 facts and circumstances of the case indicate beyond a reason-

able doubt that the defendant acted corruptly, that is, with a bad purpose in mind.

Finally, in regard to the first element, I charge you as a matter of law that no money is required to be paid as a fee or otherwise for the processing of Social Security card applications.

As to the second element, it is not necessary for you to find that Mrs. Sanchez was in fact influenced or induced to violate her lawful duty. All that is required is that it was the intention of the defendant in paying or offering the bribe so to influence and induce her. In other words, the defendant can probably be found guilty of the crime of bribery regardless of what Mrs. Sanchez was thinking or planning.

To phrase it somewhat differently, it is not necessary that the bribe was successful or that Mrs. Sanchez was in fact influenced or induced to violate her official duty. All that is necessary is that the defendant paid the money with the specific intent to influence Mrs. Sanchez in the processing of her Social Security card applications and to induce her to code them incorrectly.

On the other hand, if money or a gift is given to a public official without an intent to influence the performance of an official act, the giving of such money or gift

is not a violation of the bribery statute as charged in
Count 1.

So, if you find that the defendant did not
intend to influence the public official in giving her money,
whether the official who's conduct was influenced or not, the
defendant must be acquitted on Count 1.

As to the element "unlawfully, wilfully and
knowingly," you must be satisfied beyond a reasonable doubt
that the defendant knew what he was doing; that he did it
deliberately and voluntarily and not because of mistake,
accident, negligence or some other innocent reason. An act
is wilful if it is done knowingly and deliberately with a bad
motive or purpose. Unlawfully means contrary to the law. In
determining whether the defendant was acting knowingly and
wilfully it is not necessary that the defendant knew that he
was violating any particular law. It is sufficient if you
are convinced beyond a reasonable doubt that the defendant
was aware of the general unlawful nature of his acts as
alleged in the indictment.

Knowledge and intent exist in the mind.
Since it is not possible to look into a person's mind to see
what went on, the only way you have for arriving at a decision
in these questions is for you to take into consideration all
the facts and circumstances shown by the evidence, including

the exhibits, and to determine from all such acts and circumstances whether the requisite knowledge and intent were present at the time in question. Direct proof is unnecessary. Knowledge and intent may be inferred from all the surrounding circumstances.

Now as to Count 2, I charge you that the offer or payment of money to any employee of the Social Security Administration by a private citizen for or because of the processing of Social Security card applications for that private citizen is an offer of payment otherwise than as provided by law for the proper discharge of official duty as stated in the statute which is charged to be violated in this Count of the indictment.

As I told you earlier, no fee or payment of money is required by the Government for the processing of any Social Security card applications.

In order to find the defendant guilty of the crime charged in Count 2 you must find beyond a reasonable doubt the following elements:

First, that the defendant between February 1976 and September 10, 1976 directly or indirectly gave, offered or promised money to Mrs. Sanchez, then an employee of the Social Security Administration.

Second, that the defendant gave, offered or

2 promised this money for or because of the processing by Mrs.
3 Sanchez of applications for Social Security cards, and,
4 finally, that the defendant did such acts unlawfully, wil-
5 fully and knowingly.

6 As to the first element, although the payment
7 of money to Mrs. Sanchez is also charged in Count 2, actual
8 payment is not necessary to the commission of the offense
9 with which the defendant is charged. The first element may
10 be satisfied if you find beyond a reasonable doubt that Mr.
11 Amparo offered or promised Mrs. Sanchez money.

12 As to the other elements of Count 2, however,
13 they are different from those of Count 1. The purpose of the
14 section of the statute involved in Count 2 is to prohibit any
15 individual who is dealing with a Government employee in the
16 course of his or her official duties from giving the employee
17 additional compensation or a gratuity for or because of an
18 official act already done or about to be done.

19 Thus, with respect to Count 2, the charge of
20 giving or promising an unlawful fee or gratuity, the Govern-
21 ment is required to prove beyond a reasonable doubt that the
22 defendant offered or promised to pay or did in fact pay money
23 for or because of Mrs. Sanchez' processing of Social Security
24 card applications for him and that he did so unlawfully,
25 willfully and knowingly; that is, as I have told you before,

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2 that the defendant acted deliberately with a bad motive or
3 purpose and voluntarily and not because of mistake, negligence
4 or some other innocent reason, and that the defendant was
5 aware of the general unlawful nature of his actions.

6 In other words, it is not necessary that you
7 find that the defendant corruptly promised or gave money with
8 the specific intent to influence Mrs. Sanchez, as I have
9 previously defined these terms to you as part of Count 1.

10 Both Counts of the indictment charge that
11 certain acts occurred on or about certain dates. It does not
12 matter if the transaction occurred on the exact date listed
13 in the indictment. The law only requires a substantial
14 similarity between the dates alleged in the indictment and
15 the dates established by the evidence.

16 There has been a suggestion by the defense
17 that Mrs. Sanchez, rather than the defendant, initiated the
18 idea of the payment of money in return for the processing of
19 Social Security card applications. It is no defense to either
20 of the crimes charged that the payment of money for this pur-
21 pose was not originally the defendant's idea, assuming this
22 is true.

23 As I have already explained, in order to con-
24 vict the defendant of bribery or of paying an unlawful
25 gratuity you must find all of the elements of the crime

1 mclp 357

2 beyond a reasonable doubt. As I have previously instructed
3 you as to what the elements of these crimes are, I will not
4 repeat those instructions but will only remind you that if
5 you find that any of the elements of any one of these crimes
6 has not been proved beyond a reasonable doubt you must acquit
7 the defendant of that crime. If, however, you find beyond a
8 reasonable doubt that all the elements of one of these crimes
9 are present, you must find the defendant guilty of that crime
10 regardless of whether Mrs. Sanchez participated in or initiated
11 the scheme.

12 Count 1, the bribery Count, and Count 2, the
13 unlawful gratuity Count, involve the same evidence, but the
14 applicable law is different and I have explained it to you.

15 The relationship of the law applicable to
16 bribery and that applicable to unlawful gratuity is such that
17 there may not be a conviction on both the bribery and the
18 gratuity Count involving the same transaction. You are to
19 consider Count 1 first in your deliberations, and if you find
20 beyond a reasonable doubt that the defendant is guilty on
21 Count 1, bribery, I instruct you not to consider Count 2 for
22 the reason I have just indicated.

23 On the other hand, if after thorough considera-
24 tion you do not find the defendant guilty on Count 1, then and
25 then only should you consider his guilt or innocence on Count

1 mclp 358

2 2.

3 Thus, if you reach a verdict you will be
4 called upon to state whether you have found the defendant
5 guilty or not guilty and if guilty, whether the giving of a
6 bribe under Count 1 or unlawful gratuity under Count 2.

7 A few more general rules. There are two types
8 of evidence on which a jury may properly rely. First direct
9 evidence, which is where a witness testified to what he or
10 she saw, heard or observed, or he or she knows of his or her
11 own knowledge, something which comes to him or her by virtue
12 of his or her senses.

13 Circumstantial evidence is evidence of facts
14 or circumstances from which one may infer connected facts
15 which reasonably follow in the common experience of mankind.
16 Circumstantial evidence is that evidence which tends to prove
17 a disputed fact by proof of other facts.

18 There is a simple example which we often use
19 in this courthouse to explain circumstantial evidence.
20 Assume that when you entered the courthouse this morning the
21 sun was shining and it was a nice day. Also assume that in
22 this courtroom the blinds are drawn and you cannot look out-
23 side.

24 As you are sitting here someone walks in with
25 an umbrella which is dripping wet. Somebody walks in in a

1 raincoat which is also dripping wet. You cannot look out of
2 the courtroom. You cannot say whether or not it is in fact
3 raining, but on the combination of facts which I have asked you
4 to assume it would be reasonable and logical for you to con-
5 clude that it has been raining.
6

7 That is all there is about circumstantial
8 evidence. You infer on the basis of reason and experience
9 from an established fact the existence of some other facts.

10 Circumstantial evidence is of no less value
11 than direct evidence. As a general rule the law makes no
12 distinction between direct and circumstantial evidence, but
13 simply requires that before convicting a defendant the jury
14 must be satisfied of guilt beyond a reasonable doubt from all
15 the evidence.

16 In addition, there are times when different
17 inferences may be drawn from a certain set of facts and an
18 inference is a deduction or a conclusion which the jury is
19 permitted to draw from facts which been established by either
20 direct or circumstantial evidence in the case. But an infer-
21 ence is not drawn by speculation or guesswork. Rather, it
22 must be arrived at by an exercise of your reason and your
23 common sense. So, while you are considering the evidence you
24 are permitted to draw from the facts which you find to have
25 been proven such reasonable inferences as seem justified in

the light of your experience.

As jurors you are the sole judges of the credibility and truthfulness of each witness. In weighing the testimony of the witness you should consider his relationship to the Government, the extent of the witness' interest in the outcome of the case, the manner of testifying, the appearance, the conduct while on the witness stand, his intelligence, the strength or weakness of his recollection, and the extent to which he has been corroborated or contradicted, if at all, by the other credible witnesses and evidence. The ultimate question for you to decide is did the witness tell the truth. To this end you are to use your every day common sense.

Because a particular witness may be a Government employee does not mean that his testimony is deserving of any special consideration or any greater weight by reason of that fact and, by the same token, of no lesser consideration.

Some of the evidence has consisted of recordings of conversations between the defendant and Dorotea Sanchez. I instruct you that these recordings were legally made and did not violate any right of the defendant's, but they were made with the consent of Mrs. Sanchez, who was a participant in the conversations.

If you find that any witness has deliberately

1
2 falsely as to any material fact, you may disregard all of his
3 or her testimony or you may accept that part of the testimony
4 which you believe is truthful.

5 If a potential witness could have been called
6 by the Government or by the defendant and neither side called
7 him, then you may infer that the testimony of the absent
8 witness might have been unfavorable either to the Government
9 or to the defendant or to both of them. But, on the other
10 hand, it is equally within your province to draw no inference
11 at all from the failure of either side to call a witness.
12 You should bear in mind that there is no duty upon either side
13 to call a witness whose testimony will be merely cumulative
14 of testimony already in evidence.

15 Under your oath as jurors you are not to be
16 guided or swayed in any manner by sympathy in your delibera-
17 tions or discussions. You are to be guided solely by the
18 evidence in the case. The crucial hard core question that
19 you must ask yourselves as you sift through the evidence is
20 what is the truth? It is your task to find out what the
21 truth is. Justice triumphs only if you do so. You are to
22 determine the guilt or innocence of the defendant solely on
23 the basis of the evidence or the lack of evidence before you
24 and subject to the law as I have charged you with. If you
25 have reasonable doubt as to the defendant's guilt you should

2 not hesitate for any reason to find a verdict of acquittal.

3 On the other hand, if you should find that the
4 Government has met its responsibility in proving the defen-
5 dant's guilt beyond a reasonable doubt, you should not hesi-
6 tate because of sympathy or any other reason to render a
7 verdict of guilty.

8 During the trial from time to time there have
9 been objections made by one or the other of the lawyers. It
10 is the duty of a lawyer, as I'm sure you recognize, to object
11 when he believes he should and you should not be prejudiced
12 in any way against anybody because of an objection made or
13 because of my ruling on an objection.

14 Under your oath as jurors, as I have told you,
15 you cannot allow a consideration of the punishment which may
16 be inflicted on a defendant if convicted to influence your
17 verdict in any way or to enter into your deliberations. You
18 must not be influenced by any assumption, conjecture or by
19 sympathy or any inference not warranted by the facts.

20 Now, the purpose of your deliberations is to
21 exchange views with your fellow jurors, discuss and consider
22 the evidence, to listen to each other's arguments, to present
23 your own views, and to reach a unanimous verdict as to the
24 defendant based solely on the evidence if you can do so
25 without violence to your own individual judgment.

1 Each of you must decide the case for yourself,
2
3 but do so only after an impartial consideration of the evi-
4 dence in the case and after discussion with your fellow
5 jurors.

6 Do not hesitate to re-examine your views and
7 to change your opinion when after a discussion it appears
8 that you are in error, but if after carefully considering all
9 the evidence in the case and after considering the arguments
10 of your fellow jurors you still have a conscientious view
11 which differs from the rest of the jury, you are not to yield
12 your views simply because you are outnumbered.

13 If in the course of your deliberations you
14 wish to examine any of the exhibits, you wish to have any of
15 the testimony read or if there is anything which you need
16 from me, Mr. Murray, please hand a note to the Marshal and we
17 will do everything we can to help you. In communicating with
18 me, Mr. Murray, do not in any way indicate what your vote at
19 the moment might be.

20 Remember that any verdict which you reach must
21 be unanimous.

22 Counsel?

23 (At the side bar.)

24 THE COURT: Mr. Chase.

25 MR. CHASE: Your Honor, I would like to ask

1 you to clarify something for the jury. You told them in part
2 of your charge that the defendant in connection with the
3 burden of proof has no obligation to produce evidence. I
4 would ask your Honor to say in connection with that that you
5 mean that a defendant has no obligation to produce any wit-
6 nesses or documents.
7

8 THE COURT: All right.

9 MR. CHASE: My only other point, your Honor,
10 is that I take this opportunity to move for a mistrial based
11 on Mr. Patterson's statement during rebuttal that a defendant
12 might get probation.

13 THE COURT: All right, I'll deny that.

14 MR. BUCKWALD: Just on this one point, if your
15 Honor is going to repeat one part of the instruction as to
16 the defendant's lack of obligation to produce documents or
17 witnesses, I think it is equally appropriate to repeat the
18 other part.

19 THE COURT: I don't think I need to do that,
20 Mr. Buckwald. I'm just going to read the sentence before,
21 when I say evidence and I'm going to include testimony or
22 documents.

23 MR. CHASE: The witnesses or documents.

24 MR. PATTERSON: I would just make an objection
25 to that, your Honor. It is perfectly clear what the evidence

1 is and I don't know why Mr. Chase is entitled to an elabora-
2 tion on instructions being given that are perfectly clear.
3 It also draws attention to one instruction more than the
4 others and this kind of question or this kind of statement
5 which has been made before is perfectly adequate.
6

7 THE COURT: The more I think of it, if I'm
8 going to do it again -- then no evidence means anything and
9 if I'm going to read it again I think I would have to read
10 the second part and I don't want to do that. I think I will
11 grant your application.

12 MR. PATTERSON: Thank you, your Honor.

13 (In open court.)

14 THE COURT: All right, ladies and gentlemen,
15 one final word: your oath sums up your duty: without fear or
16 favor to anyone you will truly try the issues between these
17 parties, the defendant and the Government, based solely upon
18 the evidence and my instructions as to the law. This is
19 important to the Government and it is important to the defen-
20 dant.

21 Mr. Pleasant, I'm going to excuse you at this
22 time. I want to say that I appreciate very much your service
23 and your patience and your attention to duty. Thank you very
24 much. You are excused.

25 (Marshal sworn.)

THE COURT: All right, ladies and gentlemen,
we will send into you copies of the indictment and you'll let
me know, Mr. Murray, if you want anything else.

(Jury left the courtroom.)

(Recess.)

THE COURT: I have a note from the jury which
reads:

"Please could we have all of the evidence in
the case?"

Mark this as Court Exhibit 1.

(Court Exhibit 1 was marked.)

Can counsel work on this problem.

MR. PATTERSON: Can we proceed on the assumption
that they mean exhibits?

THE COURT: Yes.

(Recess.)

MR. CHASE: On behalf of the defense, your
Honor, the term evidence --

THE COURT: We'll bring them in. Bring the
jury in.

(Jury present.)

THE COURT: Mr. Murray, I have a note from you
which reads:

"Please could we have all of the evidence in

the case."

Are you referring to the exhibits or do you --

THE FOREMAN: Exhibits and the transcript of
tapes.

THE COURT: All right. Thank you very much.
You can retire. We will send them in to you in a few minutes.

(The jury left the courtroom.)

(Recess.)

MR. CHASE: Your Honor, there is only one
slight physical problem and that is Exhibit A.

THE COURT: Mr. Ferrar and the Marshall will
be glad to take care of that.

MR. PATTERSON: I suggest that some kind of
communication be made to the jury as to the tapes.

THE COURT: I don't think we need to refer to
the tapes. He specifically referred to the transcripts.
Unless you want me to, Mr. Chase --

MR. CHASE: I think I do.

THE COURT: All right, bring the jury in.

(Jury present.)

THE COURT: Mr. Murray, we have the documen-
tary evidence assembled and we will turn it over to the
Marshal and he will deliver it to you. We will have the
blackboard carried back into the room, which is in evidence.

There are also in evidence the tapes from which the transcripts were made. We are giving you the transcripts. Do you also want the physical tapes?

THE FOREMAN: No, the transcripts.

THE COURT: All right, thank you.

(The jury left the courtroom.)

THE COURT: If you can relinquish your two tables, I would appreciate it. I have another matter.

MR. PATTERSON: May I quickly put that list of 3500 material that was turned over to Mr. Chase on the record and have it marked as a Court Exhibit?

THE COURT: Yes.

Mr. Chase, do you know what we are doing?

MR. CHASE: I believe I do. No objection, your Honor.

THE COURT: All right, that may be marked as a Court Exhibit.

(Court Exhibit 2 is marked.)

(Recess.)

THE COURT: I have a note which reads: "Could we have some coffee?" Court Exhibit 3.

(Court Exhibit 3 was marked.)

(Jury present at 6:15.)

THE COURT: Mr. Murray, ladies and gentlemen,

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2 we are going to adjourn at this time until tomorrow morning.

3 When would you like to resume in the morning?

4 THE FOREMAN: 9:30, your Honor.

5 THE COURT: All right, 9:30. I want you all
6 to be prompt because you may not resume your deliberations
7 until all twelve have reassembled, so it is even more impor-
8 tant that you all be here on time tomorrow morning at 9:30.

9 The weather has apparently has changed for
10 the better, so you shouldn't have any problems. You may not
11 talk about this case until you are all assembled in the jury
12 room. Do not talk about this case between yourselves or with
13 anybody else, including your family when you go home tonight.
14 They may want to know about it. You are not to discuss it
15 with them. It is more important now not to discuss it with
16 anybody else. Then, at 9:30 tomorrow morning, Mr. Murray and
17 members of the jury, I ask you to discuss it among yourselves.

18 (Trial recessed until March 24, 1977

19 at 9:30 a.m.)
20
21
22
23
24
25

-----x

UNITED STATES OF AMERICA, :
vs.
RAMON AMPARO, a/k/a "RAYMOND : 76 CR 1016
GOMEZ", :
Defendant. :

-----x

B e f o r e :

HON. CHARLES E. STEWART, JR.,
District Judge,

New York, New York
March 24, 1977 - 9:30 A.M.

(Trial resumed.)

THE COURT: I have a note from the jury which
reads:

"One. A copy of the Judge's charge to the
jury."

I am going to call the jury in and ask them
if they want me to read the entire charge or just portions
of it.

"Two. If proper, may the Court instruct the
jury as to the law as to the relevance of unlawful acts on
the part of a person or persons other than a defendant to
these proceedings?"

And Mr. Chase has handed me a proposed answer
to that which reads:

1 mclp 371
2 "As to the unlawful acts of others I instruct
3 you that you may consider all the evidence presented to you
4 during this trial and any inferences reasonably drawn from
5 that evidence in determining the issues before you."

6 What do you think of that, Mr. Patterson?

7 MR. PATTERSON: Your Honor, I'm afraid I don't
8 see what that adds. They have been told the substance of
9 that instruction any number of times. I would prefer your
10 Honor's original suggestion, which is to say something to the
11 effect -- I don't remember the exact words -- that the defen-
12 dant is on trial here and that the unlawful acts of others
13 are irrelevant.

14 MR. CHASE: Your Honor, because of my mis-
15 givings about that original proposal I have submitted to the
16 Court what your Honor has just read and I would ask that it
17 be marked as a Court Exhibit with the proper number, because
18 I don't think the jury should be prohibited from considering
19 the unlawful acts of others if they can draw reasonable
20 inferences about it from the evidence presented to them and
21 if they feel it is relevant in determining the issues of
22 guilt on either of the counts before them.

23 I think by saying to them that those are
24 irrelevant there may be something which by inference or as
25 part of the evidence they feel is something that bears

2 directly upon one of the issues, either knowledge or --

3 THE COURT: How about my saying something like
4 this: the lawfulness or unlawfulness of acts --

5 MR. PATTERSON: We have just noticed the
6 defendant is not present.

7 THE COURT: When the defendant appears, Mr.
8 Chase, do you want me to start all over again or can we pick
9 up where we are?

10 MR. CHASE: I think we can pick up, your Honor.

11 THE COURT: All right.

12 (Pause.)

13 MR. CHASE: All right, your Honor, the defen-
14 dant is here.

15 THE COURT: I think Mr. Chase has a point.
16 Acts done by others may or may not be important to them, but
17 if they are in evidence, acts done by others, obviously they
18 can consider those acts. But whether or not they are lawful
19 or unlawful, it seems to me, is irrelevant, so what I'm going
20 to suggest is that the lawful or unlawful act by a person or
21 persons other than the defendant -- I guess it ought to be
22 the question whether acts by a person or persons other than
23 the defendant, lawful or unlawful, is irrelevant to this
24 proceeding, and then give in substance what Mr. Chase is
25 proposing, which is to the effect that they can consider all

1 the evidence and consider all of the inferences which they
2 wish.
3

4 The note reads:

5 "If proper, may the Court instruct the jury
6 on the law as to the relevance of an unlawful act as to a
7 person other than the defendant in these proceedings?"

8 I suppose we would interpret that to mean:
9 are acts done by others which are unlawful relevant. If they
10 are in evidence it is because they were considered to be
11 relevant and they can consider them. But the question whether
12 the acts are lawful or unlawful is of no consequence, it seems
13 to me.

14 MR. CHASE: I don't think they are asking
15 about the lawful acts. I think they are asking about the
16 unlawful acts of others.

17 THE COURT: If so, they can consider them if
18 they are unlawful, may they not?

19 MR. BUCKWALD: They can consider all the
20 evidence that is in the trial. I think that we should be
21 more responsive and less confusing in our response to them.

22 THE COURT: Then I ought to take that sugges-
23 tion Mr. Chase advises, which is, once again, you may con-
24 sider all the evidence presented to you during this trial and
25 any inferences reasonably drawn from that evidence in deter-

mining the issues.

MR. BUCKWALD: The specific part of your charge, as I recall it was that if they believed that Mrs. Sanchez was involved in unlawful acts, they should not be taken into account.

THE COURT: No, they can take into account the acts.

MR. BUCKWALD: That is correct, the acts, but that would not absolve the defendant of responsibility.

THE COURT: Yes.

MR. BUCKWALD: I think that should be repeated. Of all the things that this question can possibly be directed to, that appears to be the most likely and to fail to repeat that instruction I think would be confusing and would be misleading.

THE COURT: I don't know that that is what they are focusing on. It says acts on the part of a person or persons. It seems to me they could be thinking about these aliens and that they are here illegally. Maybe they are interested in finding that --

MR. BUCKWALD: If they are directed to those two things, illegal aliens of Mrs. Sanchez being involved -- your Honor, the fact that other people committed unlawful acts is irrelevant to the guilt or innocence of the defendant.

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2 MR. CHASE: If we start to go to specific
3 subjects, I'm going to have a problem. I suggest, and I
4 think it is quite consistent, the Court has stated what the
5 law is and that they could be considering whether if Mrs.
6 Sanchez has committed unlawful acts, your Honor hasn't told
7 them how it may affect them in terms of her credibility.

8 THE COURT: I will tell them first that the
9 lawfulness or unlawfulness of acts by a person or persons
10 other than the defendant is irrelevant to this proceeding,
11 and I'll read Mr. Chase's proposal and the fact that they can
12 consider all the evidence presented to them, and then I will
13 also read my supplemental charge which has to do with Mrs.
14 Sanchez.

15 MR. BUCKWALD: If the defendant was asking
16 Mrs. Sanchez to commit a lawful or unlawful act --

17 THE COURT: The question says: "Other than by
18 the defendant."

19 MR. BUCKWALD: Mrs. Sanchez is submitting a
20 false application at the defendant's request and one infer-
21 ence is to be drawn from that, and if she is submitting a
22 proper legal application at the defendant's request, another
23 inference is to be drawn.

24 THE COURT: I am going to read the jury your
25 request, which was part of my charge, that if they think she

has committed a crime, in effect, forget it.

MR. PATTERSON: Just to elaborate slightly on what Mr. Buckwald was saying, I also am not sure that the lawfulness or unlawfulness of other acts is irrelevant. We could take also the case of the aliens. If the aliens are unlawfully here that makes a difference in this case, and if they are unlawfully here, that is another aspect. The defendant's knowledge of whether they are here specifically lawfully or unlawfully is very relevant.

THE COURT: I think that is a part of it.

MR. CHASE: I agree with the Court in its intention to read my response in the supplemental request of the Government, the complete supplemental request of the Government.

MR. PATTERSON: That is the supplemental charge of the Government referring to Mrs. Sanchez' complicity.

THE COURT: Yes. What I propose to do is find out what portions of the charge they want me to read. Then I will send them back and take this plea before I read it to them, unless it is just one small portion.

We should mark the questions as Court Exhibit 4 and Mr. Chase's proposed charge in answer to the questions as Court Exhibit 5, and another note from the jury as Court Exhibit 6.

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(Court Exhibits 4, 5 and 6 were marked.)

(Jury present.)

THE COURT: Good morning, ladies and gentlemen.
I have a note from you, Mr. Murray, which reads: "A copy of
the Judge's charge to the jury."

I can't give you a copy, but I can read back
to you either the entire charge, or, if it is just a portion
of it --

THE FOREMAN: I think it is the last portion
of it that they want.

THE COURT: What is the subject matter?

THE FOREMAN: Mainly about the inducement part.
I think that was towards the last part of both Counts 1 and
2.

Then, another question, do we have to dispose
of Count 1 before we go on to Count 2?

THE COURT: I will read you my charge on that
one.

THE FOREMAN: Okay.

THE COURT: And then you said you wanted the
inducement section?

THE FOREMAN: Right.

THE COURT: Was that dealing with the charge
in the indictment?

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THE FOREMAN: Yes.

THE COURT: As to both Counts 1 and 2?

THE FOREMAN: Right.

THE COURT: You want me to read my charge on Counts 1 and 2; is that correct?

THE FOREMAN: Right.

THE COURT: All right. And then also I will read my charge to you about the order in which you deal with the Counts.

Your second question is: "If proper, may the Court instruct the jury on the law as to the relevance of unlawful acts on the part of a person or persons other than the defendant to these proceedings?"

As to the unlawful acts of others, I instruct you that you may consider all the evidence presented to you during this trial any inferences reasonably drawn from that evidence in determining the issues before you.

Also, I would like to read to you a portion of my charge:

There has been a suggestion by the defense that Mrs. Sanchez, rather than the defendant, initiated the idea of a payment of money in return for the processing of Social Security card applications. It is no defense to either of these crimes charged that the payment of money for this

1 purpose was not originally the defendant's idea, assuming
2 that this is true. In order to convict the defendant of
3 bribery or obtaining an unlawful gratuity you must find all
4 the elements of the crime beyond a reasonable doubt. I have
5 previously instructed you as to what the elements of these
6 crimes are. I will not repeat these instructions. I will
7 repeat them to you again shortly. I will only remind you
8 that if you find that any of these elements of any of these
9 crimes has not been proved beyond a reasonable doubt, you
10 must acquit the defendant of that crime. If, however, you
11 find beyond a reasonable doubt that all the elements of one
12 of these crimes are present you must find the defendant
13 guilty of that crime regardless of whether Mrs. Sanchez parti-
14 cipated in or initiated the scheme.

15
16 It is going to take me a few minutes to get
17 organized on the rest of the charge that you want me to read
18 back to you, so I am going to excuse you and I will get back
19 to you just as quickly as I can. Thank you.

20 (Jury left the courtroom.)

21 MR. CHASE: Your Honor, in the few moments since
22 you last spoke to the jury I have reflected and I have devel-
23 oped a great concern over what I believe is now a somewhat
24 unbalanced picture. There may be a certain imbalance in their
25 minds at this point with regard to the question of unlawful

1 mclp 379

2 acts of persons other than the defendant. I think ⁸⁶⁶ that the
3 effect of reading them the Government's supplemental request
4 at the end may have led some of the jurors to believe that
5 whether Mrs. Sanchez committed lawful or unlawful acts or did
6 something that she hasn't told them about or didn't i. of no
7 relevance at this point. I think that could be the clear
8 import and I am handing up what I have asked that they be
9 reminded as to any witness, if they feel that the witness has
10 falsely testified concerning unlawful acts or any other sub-
11 ject that they may take into account in determining credi-
12 bility. They haven't been reminded of that. They have only
13 been reminded that Mrs. Sanchez initiated the project and it
14 doesn't make any difference. I'm concerned that whether she
15 told him a lie about that or didn't makes no difference in
16 their determination. I think that is the import of the Govern-
17 ment's supplemental instruction. Not technically word by
18 word, but to a group of laymen that is the impression they
19 may have been left with and the defense is very concerned.

20 THE COURT: I don't see that they would get
21 that out of that portion of the charge. That just says that
22 even if the defendant originated the idea, that doesn't mean
23 that Mr. Amparo should not be convicted.

24 MR. CHASE: The import of that to them may be
25 something that they should not consider at all. Of course,

1 in the question of credibility it becomes central and they
2 haven't been reminded as to that. I think they just have
3 decided whether she told him a lie about that or not doesn't
4 make any difference. It doesn't have any bearing on the case.
5

6 THE COURT: I don't think that goes to the
7 question of whether she lied, that is, assuming they dis-
8 believed her, and therefore they can still convict even if
9 they disbelieve her. That is all it says.

10 MR. CHASE: Upon reflection, looking at them
11 and listening to it myself, I am very concerned that those
12 jurors may think that whether Mrs. Sanchez told them about
13 something that happened in the past that was unlawful on her
14 part or didn't makes no difference. I think we have forgotten
15 in part the instructions as to credibility as to which her
16 unlawful acts may be extremely relevant because she has not
17 testified to them. In fact, she denied any in this court-
18 house under oath.

19 THE COURT: If we carry your argument to an
20 extreme I fear that they will have forgotten I charged and I
21 should give them the entire charge, which obviously I'm not
22 going to do.

23 MR. CHASE: Not that at all. You have now read
24 them one part of your charge, a supplementary request of the
25 Government which strongly suggests, again, to a layman -- but

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2 I think that is what we are dealing with obviously -- that
3 the question of whether Mrs. Sanchez initiated the project
4 or did something unlawfully herself is of no consequence.
5 That is, I think, the clear import of it. I am only asking
6 that they be reminded as to credibility.

7 THE COURT: I don't think I have to read any-
8 thing more than the one sentence I read to them: If you
9 find that any witness has deliberately testified falsely as
10 to any material fact, you may disregard all of his or her
11 testimony or you may accept that part of the testimony which
12 you believe is truthful.

13 MR. PATTERSON: We have no objection if that is
14 done in the body of the other instructions that your Honor
15 will be reading to them at their request.

16 THE COURT: I am reading them one after the
17 other.

18 MR. PATTERSON: All right.

19 THE COURT: I take it that I should read to
20 them my charge on Count 1 and my charge on Count 2 and my
21 charge on the order in which they are to deal with the two
22 Counts.

23 MR. CHASE: Yes, your Honor.

24 THE COURT: All right.

25 MR. CHASE: And the sentence your Honor indicated.

MR. PATTERSON: Could we clarify one thing? If your Honor is going to read the credibility charge is it going to be read completely?

THE COURT: I am going to read the one sentence.

MR. CHASE: Would your Honor repeat it?

THE COURT: Yes.

"If you find that any witness has deliberately testified falsely as to any material fact you may disregard all of his or her testimony or you may accept that part of the testimony which you believe is truthful."

MR. CHASE: Would your Honor mark my note as a Court Exhibit?

THE COURT: Yes.

MR. CHASE: Thank you, your Honor.

(Jury present.)

THE COURT: I am going to read to you first, ladies and gentlemen, my charge on Counts 1 and 2. You will recall when I gave you my charge I first read to you the first and second Counts of the indictment. You have copies of the indictment.

THE FOREMAN: Yes.

THE COURT: Do you want me to repeat them now?

THE FOREMAN: No.

THE COURT: I will read to you again the two

statutes which are involved as to the first Count:

"Whoever directly or indirectly corruptly gives, offers or promises anything of value to any public official with intent to influence any official act or to induce such public official to do or omit to do any act in violation of his lawful duty...commits a crime."

As to the second Count, "Whoever otherwise than as provided by law with the proper discharge of official duty, directly or indirectly, gives, offers or promises anything of value to any public official for or because of any official act performed or to be performed by such public official,... commits a crime."

To clarify the meaning of the statute, I will define several of the terms I have just read you from the statute. I charge you as a matter of law that an employee of the Social Security Administration is a public official within the meaning of the statute charged to be violated in this indictment. As a matter of law, the processing of Social Security card applications by an employee of the Social Security Administration is an official act within the meaning of the statutes. The falsification or incorrect processing of Social Security applications by an employee of the Social Security Administration in violation of written or oral instructions from that employee's superiors is in fact in

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2 violation of such employee's lawful duty within the meaning
3 of the statutes.

4 Now, the essential elements of the crime of
5 bribery which is charged in the first Count: In order to find
6 the defendant guilty of the crime of bribery charged in Count
7 1 of the indictment, you must find beyond a reasonable doubt,
8 first, that the defendant between the time of February 1976
9 and September 10, 1976 corruptly gave, offered or promised
10 money to Mrs. Sanchez, who was then an employee of the Social
11 Security Administration.

12 Second, that the defendant corruptly gave,
13 offered or promised this money to Mrs. Sanchez with the
14 specific intent to influence her in the processing of Social
15 Security card applications and to induce her to process those
16 forms in a way that violated her instructions from her
17 superiors.

18 Third, that the defendant did such acts unlaw-
19 fully, wilfully and knowingly.

20 As to the first element, although the payment
21 of money to Mrs. Sanchez is charged in this indictment,
22 actual payment is not necessary to the commission of the
23 offense with which the defendant is charged. The first ele-
24 ment may be satisfied if you find beyond a reasonable doubt
25 only that Mr. Amparo offered or promised Mrs. Sanchez money.

1 The first element also requires you to find beyond a reason-
2 able doubt that the defendant corruptly gave, offered or
3 promised Mrs. Sanchez money.
4

5 An act is corruptly done if done voluntarily
6 and intentionally and with a bad purpose of accomplishing
7 either an unlawful end or result or a lawful end or result
8 by some unlawful method or means. So, a person acts corruptly
9 whenever he makes a wilful attempt to persuade or influence
10 the official action of a public official by an offer of money
11 or something of value.

12 Proof that compensation was offered with corrupt
13 intent to influence a Government official is made by reference
14 to acts, conduct, surrounding circumstances and reasonable
15 inferences that can be drawn therefrom. Proof of payment
16 alone is not sufficient to show corrupt intent.

17 Thus, in order to find the defendant guilty of
18 bribery the jury must be satisfied that all the facts and
19 the circumstances of the case indicate beyond a reasonable
20 doubt that the defendant acted corruptly, that is, with a bad
21 purpose in mind.

22 Finally, in regard to the first element, I
23 charge you as a matter of law that no money is required to be
24 paid as a fee or otherwise for the processing of Social Security
25 card applications.

As to the second element, it is not necessary for you to find that Mrs. Sanchez was in fact influenced or induced to violate her lawful duty. All that is required is that it was the intention of the defendant in paying or offering the bribe to so influence and induce her. In other words, the defendant can properly be found guilty of the crime of bribery regardless of what Mrs. Sanchez was thinking or planning; or, phrased somewhat differently, it is not necessary that the bribe was successful or that Mrs. Sanchez was in fact influenced or induced to violate her lawful duty. All that is necessary is that the defendant paid the money with the specific intent to influence Mrs. Sanchez in the processing of the Social Security card applications and to induce her to code them incorrectly.

On the other hand, if money or a gift is given to a public official without intent to influence the performance of an official act, the giving of such money or gift is not a violation of the bribery statute as charged in Count 1. So, if you find that the defendant did not intend to influence the public official in giving her money, whether the official's conduct was influenced or not, the defendant must be acquitted on Count 1.

As to the element unlawfully, wilfully and knowingly, you must be satisfied beyond a reasonable doubt

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that the defendant knew what he was doing and that he did it deliberately and voluntarily and not because of mistake, accident, negligence or some other innocent reason. An act is wilful if it is done knowingly and deliberately with a bad motive or purpose. Unlawfully means contrary to the law.

In determining whether the defendant has acted knowingly and wilfully it is not necessary that defendant knew that he was violating any particular law. It is sufficient if you are convinced beyond a reasonable doubt that the defendant was aware of the general unlawful nature of his acts as alleged in the indictment.

Knowledge and intent exist in the mind. Since it is not possible to look into a person's mind to see what went on, the only way you have for arriving at a decision on these questions is for you to take into consideration all the facts and circumstances shown by the evidence and to determine from all such facts and circumstances whether the requisite knowledge and intent were present at the time in question. Direct proof is unnecessary, and intent may be inferred from all the surrounding circumstances.

Going to Count 2, with reference to this Count the offer or payment of money to any employee of the Social Security Administration by a private citizen for or because of the processing of Social Security card applications for

1 that private citizen is an offer or payment otherwise than as
2 provided by law for the proper discharge of official duties
3 within the meaning of the statute. As I told you earlier,
4 no fee or payment of money is required by the Government for
5 the processing of any Social Security card application.
6

7 In order to find the defendant guilty of the
8 crime charged in Count 2 you must find beyond a reasonable
9 doubt, first, that the defendant, between the time of February
10 in 1976 and September 10, 1976 directly or indirectly gave,
11 offered or promised money to Mrs. Sanchez, who was then an
12 employee of the Social Security Administration.

13 Second, that the defendant gave, offered or
14 promised this money for or because of the processing by Mrs.
15 Sanchez of applications for Social Security cards.

16 Third, that the defendant did such acts unlaw-
17 fully, wilfully and knowingly.

18 As to the first of these elements, although
19 the payment of money to Mrs. Sanchez is also charged in Count
20 2, actual payment is not necessary to the commission of the
21 offense with which the defendant is charged. The first ele-
22 ment may be satisfied if you find beyond a reasonable doubt
23 only that Mr. Amparo offered or promised Mrs. Sanchez money.

24 As to the other elements of Count 2, however,
25 they differ from those in Count 1. The purpose of the section

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2 of the statute involved in Count 2 is to prohibit any indi-
3 vidual who is dealing with a Government employee in the course
4 of his or her official duties from giving the employee addi-
5 tional compensation or a gratuity for or because of an offi-
6 cial act already done or about to be done. Thus, with respect
7 to the Count 2 charge of giving or promising an unlawful fee
8 or gratuity, the Government is required to prove beyond a
9 reasonable doubt that the defendant offered or promised to
10 pay or did in fact pay money for or because of Mrs. Sanchez'
11 processing of Social Security card applications for him and
12 that he did so unlawfully, wilfully and knowingly; that is,
13 that the defendant acted deliberately, with a bad motive or
14 purpose and voluntarily and not because of mistake, accident,
15 negligence or some other innocent reason, and that the defend-
16 ant was aware of the general unlawful nature of these actions.
17 In other words, it is not necessary that you find that the
18 defendant corruptly promised or gave money with the specific
19 intent to influence Mrs. Sanchez, as I have previously defined
20 these terms to you as part of Count 1.

21 Also, if you find that any witness has delib-
22 erately testified falsely as to any material fact, you may
23 disregard all of his or her testimony, or you may accept that
24 part of the testimony which you believe is truthful.

25 Finally, Count 1, the bribery Count, and Count 2,

the unlawful gratuity Count, involve the same evidence, but the applicable law is different and I have explained it to you. The relationship of the law applicable to bribery and that applicable to unlawful gratuity is such that there may not be a conviction on both the bribery and gratuity Counts involving the same transaction. You are to consider Count 1 first in your deliberations and if you find beyond a reasonable doubt that the defendant is guilty on Count 1, bribery, I instruct you not to consider Count 2 for the reason I have just indicated.

On the other hand, if after thorough consideration you do not find the defendant guilty on Count 1, then and only then should you consider his guilt or innocence on Count 2. Thus, if you reach a verdict you will be called upon to state whether you have found the defendant guilty or not guilty and, if guilty, whether of giving a bribe under Count 1 or offered a gratuity under Count 2.

MR. PATTERSON: Can we approach the side bar briefly?

THE COURT: Yes.

(At the side bar.)

MR. PATTERSON: Your Honor, I noticed something for the first time this time when you read your Honor's charge as to the second element of bribery. I believe you said that

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2 the defendant must have intended to influence Mrs. Sanchez
3 in an official act and induce her to violate her lawful duty.
4 I believe it should be "or," because of the way the statute
5 reads.

6 MR. CHASE: No problem.

7 THE COURT: Do you have any objection to that,
8 Mr. Chase?

9 MR. CHASE: No, your Honor.

10 THE COURT: I will read it back to them then
11 and say "or."

12 MR. PATTERSON: All right.

13 (In open court.)

14 THE COURT: I want to go back to an element of
15 the first Count, the second element of the first Count, the
16 bribery Count. I'm going to read to you the second element
17 once again. You will remember the first element is, in
18 substance, that the defendant between the dates in question
19 corruptly gave, offered or promised money to Mrs. Sanchez.
20 The second element is that the defendant corruptly gave,
21 offered or promised this money to Mrs. Sanchez with the
22 specific intent to influence her in the processing of Social
23 Security card applications or -- not and -- or to induce her
24 to process those forms in a way that violated her instructions
25 from her supervisors or her superiors.

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All right, ladies and gentlemen, thank you.

(The jury left the courtroom.)

THE COURT: Mark as Court Exhibit 7 Mr. Chase's request for a supplemental charge on credibility.

(Court Exhibit 7 was marked.)

(Recess.)

THE COURT: I have a note which reads, "We have arrived at a verdict."

(Jury present at 12:05 p.m.)

(Jury roll called; all present.)

THE CLERK: Mr. Foreman, have you agreed upon a verdict?

THE FOREMAN: Yes, we have.

THE CLERK: How say you as to Count 1 of the indictment?

THE FOREMAN: Guilty as charged, your Honor.

THE CLERK: Thank you, sir.

THE COURT: All right, ladies and gentlemen --

MR. CHASE: May we have the jury polled?

THE COURT: Yes.

THE CLERK: Mr. Foreman, ladies and gentlemen of the jury, listen to your verdict as it stands recorded: "you say you find the defendant guilty as to Count 1 as charged in the indictment."

20 THE COURT: Mr. Patterson.

21 MR. PATTERSON: Ladies and gentlemen, the Judge
22 has asked me to be very brief. I will try to be in responding
23 to what Mr. Chase has said..

24 Let me make a couple of things clear right
25 from the start. The Government does not want you to compro-

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2 mise in this case or abandon your convictions in any way. It
3 wants you to reach, as reasonably as you can, the most correct
4 verdict you can and on the basis of all the evidence. We
5 don't want you to forget any evidence. If I left some out
6 in my summation it was because I wanted to be brief and
7 didn't think it was necessary to include everything. We want
8 you to consider everything and the evidence itself, not what
9 I say about it, and not the version that you have heard from
10 Mr. Chase for an hour and a half or two hours this morning.

11 What we want you to consider as the issue in
12 this case is this: did the defendant commit this crime, and
13 not those other issues that I referred to before, what the
14 FBI did or should have done; what the Social Security pro-
15 cedure is in Baltimore; what goes on in an Immigration
16 hearing. Consider the question that is before you: did the
17 defendant commit the crime?

18 Now, what Mr. Chase devoted his summation to
19 primarily was Mrs. Sanchez' creditibility again. He said to
20 you "Because of the massive contradictions, the massive
21 inconsistencies in Mrs. Sanchez' testimony."

22 Very briefly, I'm going to ask what these
23 massive inconsistencies and problems are.

24 Is it a fact that she can't remember whether a
25

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2 meeting on August 8th was at 1:00 o'clock or 2:00 o'clock?

3 Massive?

4 It is the question of where the defendant got
5 the phone number when he first called her when he could have
6 called up the switchboard and asked for the account number
7 clerk and been connected to her?

8 Is it the fact that the Government didn't call
9 the other people who were in the home at the home visit?

10 That is perfectly explainable, ladies and
11 gentlemen, they are not necessary. There is plenty of evi-
12 dence without them and Mr. Chase could call them himself if
13 he --

14 MR. CHASE: Objection, your Honor.

15 MR. PATTERSON: He could.

16 MR. CHASE: The rule is the defense --

17 THE COURT: No, I think that is all right. Go
18 ahead, Mr. Patterson.

19 MR. PATTERSON: So that you are not to draw
20 any conclusion from that, and the same is true of Mr. Ferguson.
21 If there was some problem, something that Mr. Ferguson could
22 say he could have been called by Mr. Chase.

23 MR. CHASE: I strongly object to this. The
24 defense has no obligation to call any witnesses.

25 THE COURT: I think that is all right. Go

1 ahead, Mr. Patterson.

2 MR. PATTERSON: All right.

3 The next massive problem that is alleged to
4 exist in Mrs. Sanchez' testimony is did she tell Mr. Lynch
5 that the first visit to the office was a few days after the
6 home call or was it more like a week or two?

7 Mr. Lynch very carefully told you he wasn't
8 sure what she said. She used some approximate dates. These
9 dates don't make much difference anyway, whether it is a few
10 days or a week, it doesn't affect the basic events in this
11 case. I ask you if it is a massive problem with her testi-
12 mony?
13

14 Then there was the question of when she
15 reported to Brown. She remembers the conversation with him
16 as being after the first conversation in her home with the
17 defendant, and Brown remembers the conversation too, but
18 Brown doesn't remember that she mentioned a bribe or a name.
19 It was a conversation in a busy office. She may not have
20 made herself clear.

21 I ask you again, ladies and gentlemen, is that
22 a massive problem with Mrs. Sanchez' testimony?

23 Then the question of whether she reported to
24 Miss Baker and Mr. Caviano. Mr. Caviano has explained to you
25 why she didn't report to him. She has a right to report to

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2 Mr. Brown. She didn't get along with Mr. Caviano. She did
3 report to Miss Baker or spoke to her or at least asked her
4 what she should do, whether she had done the right thing.
5 How many people is Mrs. Sanchez supposed to report to? A
6 massive problem, I suppose Mr. Chase would say.

7 Then there is the matter of this statement
8 which she signed. The only thing that Mr. Chase has pointed
9 to in this statement that is inconsistent, in addition to
10 this curious meeting which is somehow suggested here but which
11 nobody else can remember --

12 MR. CHASE: Objection. Mr. Brown was quite
13 clear on that point. He remembered.

14 THE COURT: Mr. Chase, as you indicated, Mr.
15 Patterson is arguing about the evidence just as you did.

16 MR. CHASE: He cannot misstate it, your Honor.
17 I believe that was a misstatement. Mr. Brown's testimony was
18 clear as to his recollection after --

19 MR. BUCKWALD: If we are considering misstate-
20 ments of the evidence in his summation we could go on for
21 four days.

22 THE COURT: Let me say once more at this point
23 in time: as you know, you will decide this case on the
24 evidence and the evidence is what is in evidence. It is the
25 documents and the testimony. It is not what counsel says it

1 is. It is not what I say it is. It is what you remember
2 from what you heard and from what you see. When you retire
3 to the jury room if you want to take the exhibits with you or
4 have the testimony read back to you you may do that. What
5 counsel says the evidence is is not evidence of anything.
6

7 Go ahead, Mr. Patterson.

8 MR. PATTERSON: Ladies and gentlemen, this is
9 evidence. I invite you to read it. You won't find any
10 massive inconsistencies in this. There is something about a
11 Puerto Rican lady and she doesn't remember saying it to Brown;
12 something about whether the children were here or left
13 behind, and she had the applications. Read this, the evidence,
14 if you like, and you will find that it bears Mrs. Sanchez out,
15 as I said before, in every important respect.

16 Then there is the question of Mr. Brown's
17 report and how he mentioned about several visits. I remind
18 you, ladies and gentlemen, this is about , this
19 report. Mr. Brown said that he based it on the earlier
20 report which was based on a set of notes which was, in turn,
21 based on notes which was, in turn, based on what Mrs. Sanchez
22 told him.

23 MR. CHASE: I'm sorry. I respectfully, humbly
24 must object. That was not Mr. Brown's testimony.

25 THE COURT: Please, Mr. Chase, I don't think

we need your interruptions.

MR. CHASE: It is for the record basically, your Honor. I apologize.

MR. PATTERSON: Ladies and gentlemen, you heard the evidence as clearly as I did. Mr. Brown said he based this primarily on his preceding statement and notes.

Then there is the question: why didn't Mrs. Sanchez know the phone number of the defendant if it was on that student information form that she got and passed along to Mr. Lynch at the first meeting in the lobby. She testified she didn't look at it. She would have no reason to note it down, to remember it. The FBI was in charge of this case. She might easily have forgotten it.

Is that a massive problem in Mrs. Sanchez' testimony?

Then there was the question of when she called up on the tape recorder call. We listened to it. Why wasn't Ramon surprised that she had his phone number? She testified, ladies and gentlemen, Ramon had given her his phone number the previous Friday and that is, of course, why he wasn't surprised.

Then there is the matter of the August 23 meeting when the defendant came to the office and Mr. Chase questions why she processed these applications. She told you

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2 they appeared to be in order. There were birth certificates
3 with them. She couldn't remember that they were the same
4 names of the two people who had been given -- who had appli-
5 cations on August 2.

6 Why didn't she call Mr. Lynch. She did call
7 Mr. Lynch. She may not have called him right away, but the
8 applications were in order. She wasn't sure that the defen-
9 dant had been with these two men, ladies and gentlemen.
10 Hardly a massive problem.

11 And what about the secret file that Mr. Chase
12 has been telling you about? She submitted some notes about
13 these incidents. She threw them away at the first of the
14 year with the other papers. She testified she didn't know
15 she was going to testify in this proceeding. Certainly
16 believable in her case, when she must have wanted very much
17 not to testify.

18 Then there is the question Mr. Chase has raised
19 about Lopez and Cuevas, these people who allegedly Mrs.
20 Sanchez processed these applications for before and therefore
21 she's looking to you.

22 I remind you of Mrs. Sanchez' testimony as to
23 these SS 5s. She testified she was sure she never processed
24 either of them. They are both coded with a P which she never
25 uses for people born outside of the United States, and in the

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2 case of Cuevas and in the case of Lopez, it couldn't have
3 been her because there is no city of birth, which she always
4 requires. There is absolutely no evidence that Mrs. Sanchez
5 had processed forms for Mr. Gomez before. These could have
6 been processed in a different office by a different person.
7 All we know is that they weren't processed by Mrs. Sanchez.
8 All they show is that these were new applications and he was
9 doing it with someone else.

10 Finally, ladies and gentlemen, there is the
11 matter of prior calls to the defendant's home. Ask yourself
12 this, ladies and gentlemen: when Mrs. Sanchez called on
13 July 30th with the FBI right there, if she had been calling
14 and talking to these people for months, how did she know that
15 the person at the other end of the line wasn't going to answer
16 the phone and blow the whole thing for her in front of the
17 FBI by saying, "Oh, Miss Sanchez who has called every day in
18 April, every week during the summer months?"

19 Of course there had been no phone calls.

20 Ladies and gentlemen, this witness deserves a
21 little bit of defense by the Government. There has been no
22 part of her testimony that has been disproved. No evidence
23 of any motive has been introduced. Why would she make all
24 this up? Why would she come to Mr. Brown halfway through it?
25 Why would she fabricate the story and subject herself to this

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2 trial?

3 Mr. Chase in his cross-examination suggested
4 as to her misconduct. No reason has been suggested for that
5 and there is no evidence that in fact she did lie. It tempts
6 me to say, ladies and gentlemen, if you disbelieve Mrs.
7 Sanchez on the basis of no evidence that she has lied, go out
8 and acquit this defendant in two minutes. I'm only tempted
9 to say that, ladies and gentlemen, because the fact also is
10 that there is plenty of evidence, quite apart from Mrs.
11 Sanchez, although, as I say, there has been no real doubt
12 cast on her testimony. The question is did the defendant
13 give Mrs. Sanchez money with the intent to influence her in
14 getting the forms and knowing that he was doing something
15 wrong, had a generally bad motive. As for giving her money,
16 it is not denied. How could it be.

17 MR. CHASE: I must protest. By his plea of not
18 guilty the defendant has denied each and every element of
19 the crime, as your Honor has instructed.

20 THE COURT: You may go ahead.

21 MR. PATTERSON: There has been no evidence
22 introduced by the defense to contradict the fact that the
23 money was given. As to the connection between the money and
24 the applications, there is abundant evidence -- no other
25 reason has been suggested, at least not with any --

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2 MR. CHASE: Your Honor, I request a side bar.

3 THE COURT: All right.

4 (At the side bar.)

5 MR. CHASE: While you were in colloquy with
6 your Clerk the Government talked about -- the Government has
7 made remarks indicating that the defendant hadn't presented
8 any evidence as to something. That is about the fourth time
9 it has been either said explicitly or hinted at implicitly,
10 which is entirely improper before this jury giving the impres-
11 sion that the defendant has to prove something. It has come
12 before in his rebuttal.

13 THE COURT: I haven't seen or heard anything
14 improper. I don't think there has been any impropriety, and
15 if there has been any impropriety, I think my charge will take
16 care of it.

17 MR. CHASE: Your Honor was distracted momen-
18 tarily by the conversation with your Clerk.

19 MR. PATTERSON: I have no objection to having
20 it read back.

21 THE COURT: No, let's go ahead.

22 (In open court.)

23 MR. PATTERSON: I was saying, ladies and
24 gentlemen, no other reason has been suggested for these pay-
25 ments. You can't just reach out and pick one out of the thin

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2 air and say, "Well, it must have been for a chicken dinner
3 or something." There has been other reason suggested.

4 The payments were paid at the Social Security
5 office in the lobby or just outside. They were paid in an
6 envelope with Social Security applications.

7 Once again you have heard and Mr. Chase has
8 mentioned the cash on delivery aspect, when you receive you
9 get. There really isn't any other possible reading of those
10 words, except that the money was for the cards.

11 Finally, has any question been raised that the
12 defendant knew the generally wrongful nature of what he was
13 doing?

14 I won't repeat everything I said before. I
15 will in response to Mr. Chase say that it is not necessary
16 that the defendant understand everything that is in this
17 manual. What he understood very well from all his repeated
18 dealings with the Social Security Administration was how you
19 get a card and, above all, that you don't have to pay \$20 for
20 each card, and once again, there is all the evidence of his
21 knowing that he was doing something wrong from the way he met
22 in the corner of the lobby, in the car, paid the money in the
23 envelope, and from the fact that these people were in fact
24 illegal aliens.

25 By the way, on the subject of his knowing that

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they were illegal aliens, and Mrs. Chase's suggestion, maybe he just had something else to do with them. I will give you two examples which I invite you to inspect. Mr. Madrano, the application the defendant made the 28th of July -- Mr. Madrano entered the United States and was supposed to leave July 27 of 1976. The defendant was in touch with this man one day after he was supposed to leave. The same is true of Mr. Taveras and his I-94: in July 25, out July 27; application filed July 26.

Once again, I refer you to the tapes. I was challenged, during Mr. Chase's summation to find one sentence on the tape that suggested the defendant knew what he was doing wrong. Well, all right, here's one. You remember his discussion of the "helping." Mrs. Sanchez wants to know "Is someone helping you?" And she asked him in Spanish. Of course she does, because she has been asked by the FBI to try and find out. She asks him in Spanish as Mr. Chase read on page eighteen: "No, no, nobody else, nobody else told me."

Mrs. Sanchez on the next page which Mr. Chase did not read:

"No, no.

"Gomez: No. No.

"Sanchez: That makes it bad. Leaves you by yourself.

"Gomez: Nobody know you.

"Sanchez: Right.

"Gomez: Nobody know you.

"Sanchez: Okay.

"Gomez: You see my friend? He don't know

where I am.

"Sanchez: Uh-huh.

"Gomez: He don't know where I am."

Four times, ladies and gentlemen, the defendant responded to her question "Who else is helping you," with "Nobody know you, don't worry, nobody can find out what we are up to."

If you want the specific sentence they are on the tapes, four of them.

Finally, as to the defendant's command of English, I must repeat, is he saying that he didn't understand what occurred at the top of page eight:

"Mrs. Sanchez: How much money did you say you were going to give me for each?

"Gomez: 20."

And on page nine, about a third of the way down:

"Sanchez: You said me something else, but you gave me the 20. But you said to me another thing. Okay.

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2 "Gomez: What, what figure? No, no, tell me.

3 "Sanchez: You told me 25.

4 "Gomez: Yeah.

5 "Sanchez: That day. Do you remember or no
6 remember?

7 "Gomez: Don't worry -- don't worry."

8 Did he misunderstand the question in those
9 second applications for Madrano and Taveras where it says in
10 Spanish: "Have you ever applied for a Social Security card
11 before?

12 "Answer: No."

13 Ladies and gentlemen, this is a crime of
14 bribery on 125th Street where there are a lot of Spanish
15 speaking people as well in the rest of the city, and the mere
16 fact that he didn't understand English is itself no excuse.

17 That brings me to my final point, ladies and
18 gentlemen.

19 At the outset of this case you took an oath
20 and under that oath you have a serious and solemn responsi-
21 bility, a duty to decide this case of the defendant's guilt
22 on all of the evidence. You have a duty to do without fear
23 or favor, bias or prejudice to anyone, and not on the basis
24 of sympathy for the defendant, and, by the way, the subject
25 of his punishment is no concern of yours. It is the concern

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2 of Judge Stewart who could give the maximum sentence and who
3 could give probation and let the defendant --

4 MR. CHASE: Your Honor, I take most strong
5 objection. Your Honor has stated this subject is entirely
6 outside the consideration of the jury.

7 THE COURT: The question of punishment, as I
8 told you at the outset, is for me. I will repeat this to you
9 in my charge.

10 MR. PATTERSON: That is my only point, ladies
11 and gentlemen. Sympathy is not to guide you nor is the
12 question of whether Mr. Chase or I have put a more dramatic,
13 a more vehement performance on in this courtroom. Your duty
14 is to decide on the evidence the factual question: did the
15 defendant commit this crime?

16 Now, I emphasize this for a reason. It is not
17 fun to sit on judgment on someone else. It is not easy or
18 pleasant to convict them, if that is what the evidence
19 requires, but if that is what the evidence requires, it is
20 your duty to do it. I remind you that this statute was passed
21 for a reason, to protect society from the corrupting influence
22 of bribes and special favors which it cannot tolerate.

23 Don't think for one moment, ladies and gentle-
24 ment, that this is some minor, insignificant sample of that
25 corruption. Only \$40 may have passed hands, but a great deal

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2 more was promised. And it is an important case to Mrs.
3 Sanchez. Do you think she wanted to be put in the position
4 of being brought into a courtroom subjected to what she had
5 been subjected to? This statute is to protect her.

6 Also, it is important that this statute be
7 enforced every time a violation comes to light because we do
8 not know how many people there are for every Mrs. Sanchez who
9 would take a bribe or who simply don't report it. That is
10 why it's important to enforce this law and the enforcement is
11 in your hands, ladies and gentlemen, when you go into that
12 jury room, and if you find that the evidence does not prove
13 beyond a reasonable doubt the elements of these crimes you
14 must acquit. However, if you find that it does prove it
15 beyond a reasonable doubt, you must convict. That is your
16 duty and I'm sure that you will do it faithfully.

17 THE COURT: All right, ladies and gentlemen,
18 before I begin my charge will you excuse me for just a minute.

19 (Pause.)
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CERTIFICATE OF SERVICE

July 22, 1977

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Southern District of New York.

David J. Fiske

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JUL 22 1977

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